

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1193 OF 2002

Subramani .. Appellant

-Vs-

State

by Inspector of Police

Arachalur Police Station

Erode District .. Respondent

This criminal appeal is preferred under Section 374 Cr.P.C. against the judgment of the learned Additional Sessions Judge, Fast Track Court-I, Erode on 28.2.2002 in S.C.No.178 of 2001.

!For Appellant : Mr.S.Swamidoss Manokaran

^For Respondent : Mr.V.Jaya Prakash Narayan,
Govt. Advocate (Crl. side)

:JUDGMENT

The sole accused/appellant, who stood charged, tried and found guilty under Section 392 r/w 397 I.P.C. and sentenced to undergo 7 years R.I., has brought forth this appeal.

2. The short facts necessary for the disposal of the appeal can be stated as follows:

P.W.1, Rajendran, is running a Hotel, namely, Rajendra Hotel at Arachalur, Erode District. The accused was working as Tea Master under P.W.1 for some time. There was a dispute between them as to the payment of wages. Hence, the accused left the job. On 18.6.2001 at 1.00 p.m., the accused came to the shop of P.W.1 and demanded Rs.300/- as balance of his wages. When the same was refused by P.W.1, the accused took the knife, threatened him and took away the cash of Rs.150/- from the cash box of P.W.1. P.Ws.2 and 3 witnessed the said occurrence. P.W.1 lodged a complaint under Ex.P.1 to P.W.5, Grade I Constable attached to Arachalur Police Station. On the strength of Ex.P.1, P.W.5 registered a case in Crime No.81 of 2001 under Section 392 r/w 397 I.P.C. Ex.P.6, Express F.I.R. was despatched to the concerned Judicial Magistrate. P.W.6, Inspector of Police attached to Arachalur Police Station took up investigation, proceeded to the site of occurrence and prepared Ex.P.2 Observation Mahazar in the presence of witnesses and Ex.P.7 rough sketch. He examined P.Ws.1,2,3 and other witnesses and recorded their statements. On the

same day, he arrested the accused and recorded the confessional statement in front of the witnesses. The admissible portion of the confessional statement was marked as Ex.P.4. Pursuant to the confessional statement, the accused produced M.O.1, knife, M.Os.2 and 3 Rs.70, which were recovered in the presence of the witnesses under Ex.P.3 and Ex.P.5 mahazar and recorded the statement of P.W.4. On completion of investigation on 1.8.2001, P.W.6 filed a charge sheet against the accused under Section 392 r/w 397 I.P.C.

3. In order to prove the charges levelled against the accused, the prosecution examined 6 witnesses and marked 7 exhibits and 3 M.Os. On completion of the evidence of prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which he flatly denied the same as false. No defence witnesses were examined. The trial court, on consideration of the rival submissions and scrutiny of the materials available, has found the accused guilty under Section 392 r/ w 397 I.P.C. and sentenced to undergo imprisonment as stated above.

4. Arguing for the appellant, the learned counsel inter-alia raised following submissions:

A scrutiny of the evidence of P.Ws.1 to 3 would clearly reveal that there are lot of discrepancies, which would be suffice to reject the testimony outright. It is pertinent to point out that the accused was earlier working under P.W.1. Had it been true that there were incidents of threat in the past, P.W.1 would have certainly given a complaint, but he has not done so. This would cast a doubt in the conduct of P.W.1 and his evidence. P.W.2 has turned hostile, which has got to be taken note of. There was undue delay in lodging a complaint, which was in no way explained by the prosecution. Even assuming that the entire case of prosecution is taken to be proved, there is nothing to attract Section 397 I.P.C., and hence, the same has got to be considered by this Court.

5. Stoutly opposing to the contentions of the appellant's side, the learned Government Advocate would submit that regarding the incident, P.W.1 has given a clear evidence, which was fully corroborated by the evidence of P.W.3. It is true that P.W.2 has turned hostile. Pursuant to the confessional statement given by the accused, M.O.1 knife and M.Os.2 and 3 Rs.70/- were recovered from the accused in the presence of the witnesses. Thus, those facts have been clearly spoken to by P.W.4. In view of the ample evidence available, the trial court was perfectly correct in finding the accused guilty. Hence, the judgment of the lower court has got to be sustained.

6. After careful consideration of the rival submissions and scrutiny of the materials available, this court is unable to notice any substance in the appeal. The gist of the prosecution case was that the accused was employed as Tea Master under P.W.1 and there was a quarrel between them as to the payment of backwages. On the day of occurrence, namely, on 18.6.2001 the accused came to the shop of P.W.1 and demanded the backwages. When there was a refusal, the accused took a knife, threatened P.w.1 and took away the cash of Rs.150/- from the cash box of P.W.1. Shortly after the occurrence, P.W.1 lodged a complaint before Arachalur Police Station. On the strength of which, a case was registered by P.w.5. The entire incident has been clearly narrated by P.W.1, which was fully corroborated by P.W.3.

7. Added to the above evidence, the prosecution has also relied on

the confessional statement given by the accused, which was recorded by the Investigating Officer in the presence of P.W.4. Pursuant to which, the subject matter of robbery marked as M.Os.2 and 3 and M.O.1 knife were seized. This part of the evidence would clinchingly prove the nexus between the accused and the crime in question. Under the stated circumstances, all or any one of the contentions put forth by the appellant's side at the time of argument were of no consequence. This Court is of the considered view that the prosecution has clearly proved its case beyond all reasonable doubt. Coming to the question of sentence, the lower court has awarded minimum punishment under Section 392 r/w 397 I.P.C. This Court is of the considered view that except the fact that he was holding the knife in his hands at the time of occurrence, there is nothing to show that he has caused any injury or he came there with an intention to cause death. According to the prosecution, no injury was caused to P.W.1 by the accused at the time of occurrence. Hence, it is a case where he has got to be convicted under Section 392 I.P.C. simplicitor.

8. Therefore, the conviction imposed by the trial court on the appellant under Section 397 I.P.C. is set aside and the accused is found guilty under Section 392 I.P.C. The sentence awarded by the trial court has got to be reduced to 4 years R.I. which would meet the ends of justice. Accordingly, the sentence awarded by the trial court is reduced to 4 years R.I. The sentence already undergone by the accused has to be given set off. With the above modification, this criminal appeal is partly allowed.

Index : Yes

Internet : Yes

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To

1. The Addl. Sessions Judge, (Fast Track Court no.1), Erode
2. The Addl. Sessions Judge, (Fast Track Court no.1), Erode
through the Principal Sessions Judge, Erode
3. The Superintendent, Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras
5. The Dy. Inspector General of Police, Chennai-4
6. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl side)
High Court, Madras
7. The Inspector of Police, Arachalur Police Station, Erode□